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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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SUMMARY RECORD OF THE 13th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 5 May 1998, at 3 p.m.

Chairperson: Mr. ALSTON

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GE.98-15989 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of the Netherlands (E/1990/6/Adds.11, 12 and 13; HRI/CORE/1/Adds.66, 67 and 68; E/C.12/Q/NET/1; in-session document, with no symbol, containing the replies of the Government of the Netherlands to questions raised in the list of issues)

1. At the invitation of the Chairperson, the delegation of the Netherlands took places at the Committee table.

2. The CHAIRPERSON noted that the second periodic report of the Netherlands in fact consisted of three reports, concerning the European part of the Kingdom (E/1990/6/Add.11), Aruba (E/1990/6/Add.12), and the Netherlands Antilles (E/1990/6/Add.13). He drew attention to the written replies of the Government of the Netherlands, which existed only in English, and informed the delegation that some members of the Committee would therefore not be familiar with the answers. He invited the delegation to present its opening remarks on the European part of the report.

3. Mr. POTMAN (Netherlands) said he would like firstly to apologize for the lateness of the report. Unfortunately, the Netherlands had, about two years before, fallen behind in its reporting obligations to various international instruments, the Covenant among them. Since that time, his Government had made stringent efforts to bring its reports up to date, and wished to make some suggestions concerning the submission of reports. Regrettably, Aruba had been unable to send a representative; his delegation would consult with the Government in that country concerning any questions it was unable to answer. Arrangements had also been made for consultations with the Hague, where necessary.

4. The structure of the Kingdom of the Netherlands dated back to 1954, when the Netherlands, Surinam and the Netherlands Antilles, which then included Aruba, had established a new constitutional order, under which they would conduct their internal affairs autonomously and in their common interest on the basis of equality. While remaining a single sovereign entity under international law, the Kingdom had thenceforth consisted of three equal partners. In 1975, Surinam had chosen to leave the Kingdom, and had become a full State in its own right; in 1986, Aruba had become a separate country within the Kingdom with the same constitutional status as the other two countries.

5. The European part of the Kingdom was a highly developed industrial and post-industrial society; although geographically small, it was densely populated. The Parliament and executive ("the Crown", in the constitutional sense) were together empowered to make legislative decisions. Although the judiciary could challenge the constitutionality of executive measures based on formal legislation, it did not have the capacity to determine whether

parliamentary acts were constitutionally correct. The role of the judiciary was therefore bound to individual cases, while it fell to the legislature to rule on constitutional matters.

6. The Committee had chosen an apt moment for the consideration of the report: general parliamentary elections were to be held on 6 May. The term "polder model" had recently figured in international news reports: although the name derived from the lowlands, which were such a typical feature of the Dutch landscape, in the political sense it referred to a socio-economic system based on consensus-building among social partners. During much of the 1980s and the 1990s, the Netherlands had evolved a policy of wage-demand restraints (an important feature of the "polder model"), which had helped to restore the competitiveness of Dutch industry. At the same time, the Government had trimmed expenses by, inter alia, drastically reforming the social security system. On that basis, the Government coalition which came to power in 1994 had been able to deregulate the market, while at the same time shoring up the welfare system that had been set in place after World War II. Those circumstances, together with a favourable economic climate, had led to a remarkable rise in employment at all social levels.

7. Since the 1980s, the Netherlands had gradually abandoned traditional social structures, placing greater emphasis on both the rights and the responsibilities of the individual. Perhaps the most dramatic example was the transformation from a breadwinner socio-economic structure (families in which the man worked and the woman stayed at home), to a structure in which women were responsible for their own incomes and social security benefits. Traditionally, the participation of women had been low in the Netherlands, and day-care arrangements had only recently been developed on a significant scale.

8. It had become clear over the course of the previous several years that Netherlands society was moving toward a mixture of widely varying cultures. Consequently, policies were directed not at assimilating diverse cultures into the dominant culture, but at intercultural exchange and the eradication of discrimination: the Covenant was therefore an essential instrument for the Government of the Netherlands.

9. But not all members of Dutch society agreed with the views of the Government. The Committee had received commentaries from various quarters, among them the report of the Netherlands Section of the International Commission of Jurists (ICJ). That non-governmental organization (NGO) had scrutinized the second periodic report of the Netherlands; its comments were at the disposal of the Committee. Since the Netherlands Government was a strong advocate of the independence of NGOs, it had not participated in the preparation of the ICJ report, and reserved the prerogative to agree with some points and disagree with others.

10. The Netherlands Government was deeply committed to the object and purpose of the Covenant and to the Universal Declaration of Human Rights, and shared the belief that economic, social and cultural rights should have the same status as civil and political rights. Although the obligations of a Government with regard to civil and political rights were clear, however, they were less so with regard to economic, social and cultural rights. ICJ had moreover argued that the Covenant was not directly applied under the Dutch

legal order. Indeed it was not. Article 93 of the Dutch Constitution established the possibility for international treaties to be directly applied. In the case of the Covenant, the Government had expressly chosen not to invoke that provision, on the grounds that many of the Covenant's clauses represented obligations and commitments calling for Government action that went beyond mere Government guarantees. In the view of the Netherlands, Government action in a democratic State should be based on choices that arose from the political will of all.

11. In practical terms, the implementation of the rights established by the Covenant was the domain of the Government, Parliament, the judiciary and civil society. The way in which those rights were implemented was political rather than judicial, and therefore dynamic rather than static. That meant that although rights were fully recognized, the way in which they were implemented could change over time. Emphatically, it did not mean that the rights enshrined in the Covenant carried less importance than did those which could be invoked before the courts; they were simply implemented differently, and their implementation called for an active Government.

12. The Netherlands believed that the activities of the treaty-monitoring bodies should be counted among the core tasks of United Nations human rights activities; those committees and their staffs should therefore be funded by the regular budget. It was clear, however, that additional resources were needed; his Government had recently contributed 50,000 dollars toward the Programme of Action to Strengthen the Implementation of the International Covenant on Economic, Social and Cultural Rights. Efforts should be made to streamline the functions of the treaty-monitoring system; the treaty-body reporting system should, in particular, be closely scrutinized. The Government welcomed the proposals put forward in the Alston report (the final report of the independent expert on enhancing the long-term effectiveness of the United Nations human rights treaty system, E/CN.4/1998/L.11/Add.3); a follow-up should be undertaken, including practical proposals for action. It was worth noting that the former Advisory Committee Human Rights/Foreign Policy, an independent Commission which advised the Government of the Netherlands, had prepared two reports on the role of the United Nations in monitoring human rights; those reports, which contained proposals concerning ways to enhance the implementation of treaties and covenants, would soon be made available to the Committee.

13. His Government proposed that, after consideration of an initial report, a State party should submit reports which concentrated on new developments and on its reactions to a Committee's recommendations. Concomitantly, a Committee could request a State party to provide detailed accounts of particular obligations. Permitting a State party to focus on particular issues should not, however, become a means by which it evaded others.

14. His Government sought the view of the Committee with regard to that suggestion, and wished to know, in particular, whether it could submit its next report on that basis.

15. The CHAIRPERSON, replying to a question put by Mr. Riedel, said that, unless members deemed that the proposal of the Netherlands had immediate practical implications, the Committee should revert to it during its scheduled discussion on focused reporting to take place later in the session.

Articles 1 to 5

16. The CHAIRPERSON invited the members of the Committee to address comments to the delegation with regard to articles 1 to 5, which did not figure on the list of issues.

17. Mr. RIEDEL said that, by admirable tradition, the Dutch courts - criminal, civil, and administrative - often invoked the provisions of international legal instruments, especially in cases involving human rights, even when such provisions were considered to be non-self-executing. Were there any court decisions which invoked the Covenant? What was the position of the Government with regard to the draft optional protocol? He presumed that the Netherlands, like other Western European countries, took a sceptical view, according more weight to civil and political rights than to economic, social and cultural ones. Was there any reason why the Covenant should not be treated in the same way as other international legal instruments? A number of Dutch jurists had argued that the Covenant established different sorts of obligations, and to simply state that they were non-self-executing did not suffice.

18. Drawing attention to the Committee's General Comment No. 3 (1990) on the nature of States parties' obligations, he said that, in the view of the Committee, at least seven of the articles of the Covenant had direct application: the members would address their questions to the delegation accordingly. The Committee would welcome the views of the Netherlands in that regard: if it, like other Western European countries, maintained a more restrictive interpretation, the Committee simply requested that its position should be passed on to the Government, on the understanding that views could change.

19. Finally, it would be useful to know what measures, if any, had been undertaken to incorporate human rights education which emphasized economic, social and cultural rights into Dutch schools, universities and adult-education courses, as well as into training programmes for government officials.

20. Mr. SADI said he disagreed with the Netherlands Government's view that the provisions of the Covenant did not directly give rise to legal obligations and asked whether the Netherlands Government was prepared to give consideration to his view, which was borne out by certain jurisprudence of the Committee. As a subsidiary question, he asked to what extent government departments took the Covenant into account in their economic, social and cultural planning.

21. Mr. PILLAY, noting that the Dutch section of the International Commission of Jurists considered that the Covenant was only marginally, if at all, taken into consideration in the legislative and policy-making process at the national level, asked how, if that was so, the Netherlands Government

could be said to be complying with its obligations under the Covenant. He also asked for elucidation of the statement just made by the head of the delegation to the effect that the precise obligations for Governments in relation to economic, social and cultural rights were "less clear" than those relating to civil and political rights.

22. Mr. THAPALIA asked the delegation to state the Netherlands Government's position on the subject of the optional protocol to the Covenant recommended by the Vienna World Conference.

23. Mr. ANTANOVICH asked how the Netherlands Government's differentiated approach to different categories of human rights could be regarded as compatible with the United Nations concept of the indivisibility of all human rights.

24. Mr. POTMAN (Netherlands) said that his Government was fully committed to the concept of indivisibility of all human rights and accorded them the same status in terms of their implementation. The fact that, for essentially technical reasons, it did not think that economic, social and cultural rights had direct applicability certainly did not mean that it attached less importance to those rights.

25. Mr. van RIJSSEN (Netherlands) said that, unlike civil and political rights, which were essentially rights-oriented, economic, social and cultural rights were principally oriented towards the obligations of the State. The Maastricht guidelines mentioned by Mr. Riedel allowed a certain margin of discretion with regard to the implementation of the latter category of rights. In his country's system, the question of the effectiveness of steps taken to discharge an obligation was considered a matter for Parliament rather than for the judiciary. Of course, if the State failed to discharge its obligation altogether, an individual who believed that his or her human rights had been violated as a result could bring the matter before the courts. That did not mean, however, that all the provisions of the Covenant could be regarded as self-executing.

26. Mr. SADI, pointing out that articles 1, 3 and certain others of the two International Covenants were identical, urged the Netherlands Government to reconsider its position. He agreed, however, that certain economic, social and cultural rights, such as the right to health, represented a relative rather than an absolute standard, because the economic situation of each particular country had to be taken into consideration.

27. Mr. RIEDEL remarked that in a number of Western European countries the courts were entitled to pass judgement in principle on the Government's compliance with an instrument to which it was a party, but the question of precisely how that obligation was discharged was left to the relevant government department. He wondered whether such an approach, which was more lenient than direct applicability, might be acceptable to the Netherlands Government.

28. Mr. van RIJSSEN (Netherlands) said that his Government recognized the direct applicability of many economic, social and cultural rights, which, in addition to being set forth in the Constitution, were also protected by

various international instruments to which the Netherlands was a party. The difficulty arose where a caring obligation was imposed upon the Government. The right to health was a case in point. An individual could hardly complain of a violation of human rights simply because he or she was not enjoying good health. A violation certainly existed if the Government provided no health care at all, but where the system was not working very efficiently the matter became political rather than judicial.

29. With regard to the optional protocol, he said that his Government was not all opposed to the idea, but felt that its practical implications needed to be carefully investigated. A very cautious approach would have to be adopted if, on the one hand, the future workload of the Committee was not to become unmanageable and, on the other hand, if undue politicization of issues was to be avoided.

30. Replying to a follow-up question by Mr. Wimer, he said that individuals could take the Government to court in the event of forced evictions and many other situations relating to the Covenant. Not all forced evictions were violations of the right to housing. In order for the action to succeed, the plaintiff had to prove that the Government had failed to take account of his or her individual rights. In some cases brought before the Dutch courts, the judge had in fact accepted the plaintiff's view.

31. The CHAIRPERSON said that the Committee welcomed the Netherlands delegation's comments concerning the optional protocol to the Covenant and, for its part, was prepared to consider any mechanism that would enlist the Netherlands Government's support. At that stage he merely hoped that the Government would be favourable to the establishment of a group that would give careful consideration to various options.

32. Mr. AHMED, referring to article 2, paid a tribute to the well-known tolerance of the Netherlands Government and people, but remarked that, according to information provided by the Dutch section of the International Commission of Jurists, the United States Department of State, the ILO Committee of Experts and the Committee on the Elimination of Discrimination against Women (CEDAW), there was still room for better services and more expeditious procedures, especially with regard to discrimination.

33. Ms. STAAL (Netherlands) said that her Government was fully aware of the problems of specific groups such as ethnic minorities, women, the disabled and the young. A recently adopted new Equal Treatment Act provided for a stronger supervisory mechanism than its predecessor and specifically prohibited discrimination on grounds of race, gender, religious or other convictions, etc. Measures were also being taken to ensure equal participation of ethnic minorities in the labour market and to prevent discrimination against disabled persons in the fields of employment and social security.

34. Mr. POTMAN (Netherlands) drew attention to information on the Equal Treatment Act and related legislation to be found in paragraphs 190 to 193 of the core document on the European part of the Kingdom of the Netherlands (HRI/CORE/1/Add.66). So far as the place of women in the workforce was

concerned, he referred members to his introductory remarks, in which he had tried to explain some of the reasons why unemployment figures for women were higher than those for men.

35. Ms. JIMENEZ BUTRAGUEÑO asked whether the new Equal Opportunities Act included a prohibition on discrimination on the grounds of age.

36. Mr. ADEKUOYE asked for information about the integration of minorities in the labour market.

37. Mr. AHMED, referring to information provided by the Dutch section of the International Commission of Jurists, said that he accepted that members of ethnic minorities who were not Dutch nationals would be excluded from certain confidential sectors of the labour market, but wondered whether and on what grounds they were also excluded from other sectors.

38. Ms. STAAL (Netherlands) said that the Equal Treatment Act did not cover age, but the Government was in the process of preparing a bill specifically aimed at combating age discrimination.

39. No details were available on the difficulties encountered in integrating members of ethnic minorities into the labour market, but they could be provided at a later stage if the Committee so desired. It was because of difficulties, however, that the law had been changed. The success or otherwise of the new Act would be evaluated in due course.

40. Generally speaking, members of ethnic minorities who did not have Dutch nationality faced a number of restrictions in the labour market. The Ministry of Justice would only grant a residence permit in the first place to persons who could prove that they had means of support, i.e. a job, and that their employer had the necessary work permit. Before issuing such a permit, the Ministry would ascertain whether the job in question could be done by somebody already resident in the Netherlands. Non-nationals with permanent resident status faced no restrictions in the labour market. Although the Foreign Nationals Employment Act provided that vacancies could be filled by non-European Union nationals without permanent resident status, it obliged employers wishing to recruit non-EU nationals to seek the approval of the Employment Office. Priority in filling vacancies went to EU nationals and foreign nationals with permanent resident status. If no suitable candidate was found, the job would be given to a non-EU national, who would be granted a temporary work permit. After working in the Netherlands for three years, a person was free to accept any other employment.

41. Mr. POTMAN (Netherlands) said that, as the delegation had already pointed out to the Committee on the Elimination of Racial Discrimination, there were two aspects to the racial discrimination issue. The first was the attitude of the population, which the Government had a moral obligation to devise policies to combat, and which took time to change, and the second was that, comparatively speaking, many members of ethnic minorities were in a weaker socio-economic and educational position than the country's nationals, which hampered their employment opportunities.

Articles 6 and 7

42. Mr. POTMAN (Netherlands) referring in particular to the position of disabled persons in the labour market, said that a project entitled "together at work" had been launched in August 1995 with the objective of training persons with mental or physical disabilities alongside persons without disabilities, and to help disabled persons with formal qualifications to find employment. Another project, spanning the period from December 1995 to January 2000, was aimed at increasing expertise through pilot projects and, in time, within all the country's regional training centres. In addition, the number of disabled students would be increased by up to 20 per cent per year. A further programme for disabled persons would be introduced once the experimental phase had ended.

43. The Abolition Malus and Promotion of Reintegration Act had come into force in January 1996 and was aimed at improving existing regulations and introducing new stimuli. Other improvements included a revised Sickness Benefit Act, which made it an obligation for employers to pay 70 per cent of salary or wages for up to a maximum of 52 weeks of sick leave. That obligation was waived in the cases of formerly disabled persons to ensure that employers were not deterred from employing them. The Act also provided for a wages subsidy of 15 to 25 per cent in the case of a disabled person for the first four years of employment, a training grant, and an additional training grant for intensive personal training by an outside expert. Loans of up to 40,000 guilders were available to disabled persons wishing to set up their own businesses, while those receiving unemployment benefit could retain the benefit while on a training course.

44. Among the new measures to be introduced was a wage or income supplement of approximately 20 per cent for disabled persons earning less than the normal rate because of their disability, and an income supplement for disabled persons who set up their own businesses. Partially disabled persons receiving unemployment benefit could work for three months without pay to test their abilities, while retaining their unemployment benefit.

45. The Reintegration of the Work Disabled Act would enter into force during 1998 and provide mechanisms and guarantees for employers wishing to employ disabled persons or rehabilitate disabled employees, while extending the scope of existing mechanisms. The costs of adapting the workplace to the needs of disabled persons would be subsidized, and the employer would also be indemnified against any financial risks, illness or increased disablement on the part of employees who were disabled prior to taking up their employment. Any employer paying between 3 and 5 per cent of his wages bill to disabled employees would have his contributions under the Disablement Benefits Act reduced.

46. The Disabled Assistance Act for Handicapped Young Persons, which had come into force on 1 January 1998, provided benefit for young handicapped persons who became disabled during the course of their studies and who were not eligible for benefit under the Disablement Benefits Act.

47. With regard to the Committee's first question on article 6 in the list of issues (E/C.12/Q/NET/1), the Youth Employment Guarantee Act had, in

January 1998, been merged with the Jobseekers Employment Act, with a view to preventing long-term unemployment among school leavers, whose chances of finding work were thoroughly assessed when they signed on at their local employment office or applied for social benefits. Those lacking basic qualifications were offered training, work experience and financial incentives to find regular employment. The old six-month eligibility period for the jobseekers scheme had been abolished.

48. The low employment rate among the over-50s was due to a combination of demographic, economic and technological factors. The high post-world war birth rate had resulted in a large number of young workers entering the labour market during the recession of the 1970s and early 1980s, whose higher educational qualifications, up-to-date knowledge and positive attitude towards technological development made them the obvious choice for employers in the process of reorganization. At the same time, attractive early retirement schemes for older workers had been developed.

49. The trend was changing, however. Fewer younger people were entering the labour market; the number of older employees was increasing, and social changes would undoubtedly result in people having to work longer before pensions became payable.

50. Mr. SIBBEL (ILO) said that the ILO's Committee of Experts had commented on the application in the Netherlands of Convention 122 on Employment Policy and Convention 100 on Equal Remuneration. In respect of both those conventions it had stated that the unemployment measures taken by the Netherlands Government led to the creation of part-time work. In addition, the Netherlands Federation of Trades Unions had reported to that Committee that the various flexible employment relationships, mainly entered into by women, were a source of pay inequality. The Committee of Experts had subsequently noted the new legislation introduced in 1996, which prevented discrimination on the basis of working hours, and had also noted the AGFA judgement, which prohibited discrimination on the same basis.

51. Mr. ANTANOVICH wondered whether, under the new legislative framework which targeted the long-term unemployed, the short-term unemployed were neglected. What difference was there between the two groups and what provisions were there for those who were unemployed for more than three years? What provisions were there for unemployed members of ethnic minorities?

52. The problem of youth unemployment appeared to be tackled adequately at the time of entry to the labour force, but what other measures were there for tackling the problem at a later stage?

53. The 50 per cent unemployment level among the over-50s was somewhat alarming, as was the Government's apparent acquiescence in measures allowing a gradual transition from paid unemployment to retirement.

54. The Government's replies to the Committee's questions on article 6 were confusing. For example, did the merger between the Youth Employment Guarantee Act and the Jobseekers Employment Act mean that one Act had gained to the detriment of the other, or did both benefit, and if so, in what way?

55. Further explanation was also needed of each of the demographic, economic and technological reasons mentioned as being responsible for the high unemployment rate among the over-50s, as the report contained no information at all in that connection. The report also lacked useful information on the conditions of work dealt with by article 7, apart from an extensive account of working hours and overtime, which, if intended as a response to questions regarding safety in the workplace, should also have focused on the number of accidents, accident insurance, attention to environmental and other hazards and leisure time activities.

56. Mr. AHMED said that the Dutch section of the International Commission of Jurists had said that the labour policy of the Netherlands Government did not help cut unemployment; it had a negative effect, in fact, on account of the standard 9-hour working day and 45-hour working week, extendable to 10 and 48 hours respectively, which compared unfavourably with the 35-hour working week being introduced in France. The absolute maximum number of hours, including overtime, that could be worked each day was 12 and each week 60; Sunday work was permitted, subject to agreement, for certain sectors and certain jobs, with exceptions possible under the Working Hours Act. The Dutch section had also stated that there was room for considerable variation in daily and weekly working hours over the year, which might result in a considerable increase in working hours at certain times of the year for certain sectors of the economy, adversely affecting the employment opportunities of other workers. What was the reason for the Government's policy?

57. Ms. JIMENEZ BUTRAGUEÑO asked for details of graduate unemployment, which was at a high level in many countries, including Spain. Had the problem been discussed with the universities and what was the Government planning to do to remedy it?

58. Had any studies been carried out in the Netherlands on employment opportunities for disabled people, in particular on what were likely to be the most suitable jobs or professions for the disabled, bearing in mind that they were capable of equivalent or better performance in some jobs than people who were not disabled.

59. Mr. CEAUSU endorsed the comments made by Mr. Ahmed in respect of working hours and wondered why the length of the working day and working week had been increased. Compared with the figures given in paragraph 96 of the report (E/1990/6/Add.11), the current standard represented a retrograde step and might not be consistent with Council Directive 93/104/EC, which had been mentioned in the Netherlands Government's answers. Why had the Government considered it necessary to amend legislation that had been more favourable to employees, and what would be the effect on the system of remuneration of people working variable hours? How would the Government determine whether there was equal pay for equal work?

60. Mr. ADEKUOYE asked how many non-resident workers there were in the Netherlands and what particular difficulties they faced in the labour market.

61. Mr. POTMAN said that it would be difficult for the delegation to give concrete replies to the many detailed questions which had been raised. Some of the information might have to be provided at a later stage.

62. Ms. STAAL said that there appeared to be some confusion about the figures given for working hours. The normal working week was still 38 hours and the tendency was for that to decrease. For government employees, a 36-hour working week was to become standard. The 11-hour day and a working week in excess of 45 hours included the maximum permitted overtime. The new Act allowed far fewer exceptions than were possible under the 1990 Act, and provided for a shorter working week and less overtime.

63. Mr. AHMED said that there was no mention of 38 hours a week in the commentary of the Dutch section of the International Commission of Jurists.

64. Mr. CEAUSU asked whether the figure of 38 hours for a standard working week was reflected in any piece of legislation or whether it was simply the factual situation resulting from common practice.

65. Ms. STAAL (Netherlands) said that the commentary seemed to have confused normal working hours with overtime: 10 hours a day was only possible as overtime. The Working Hours Act did not provide for a 10-hour working day in normal circumstances. In most cases, the 38-hour week was regulated by means of collective labour agreements between the social partners. The current trend was towards a 36-hour week. In the negotiations for new collective agreements, efforts were being made, especially from the trade union side, to shorten the working week, but 38 hours remained the average.

66. Mr. POTMAN (Netherlands) said that the fact that working hours in the Netherlands were governed not by legislation but through negotiations between employers and employees made for a certain flexibility, with arrangements differing in the various sectors of the economy. It was that margin to deviate from the norm to which the commentary by the Dutch section of the International Commission of Jurists referred.

67. Mr. AHMED pointed out that if, with overtime, working hours could extend to 60 hours a week, those not already in work were apparently being deprived of their share of employment. Without such lavish overtime, those currently unemployed might have more chance of employment.

68. Mr. POTMAN (Netherlands) agreed that it was argued in some quarters that longer hours kept jobs from other workers. In various labour negotiations in the Netherlands, for example those involving the civil service, shorter hours had already been accepted in exchange for more jobs. The argument that shorter working hours would create employment was well known and some efforts were being made in that direction. He assured the Committee that there were strict limits on working hours and on the extent of overtime. Those limits not only protected workers but could create employment opportunities for others.

69. Ms. STAAL (Netherlands) said that the practice of part-time work was widespread in the Netherlands. The reduction of working hours frequently made time available for part-time jobs for other workers. Part-time work was not reserved for women but was accessible to everyone.

70. Mr. POTMAN (Netherlands) said that the delegation would be in a position to provide the detailed information requested by Mr. Adekuoye, Mr. Antanovich and Ms. Jimenez Butragueño at the next meeting.

71. Mr. ADEKUOYE said that, on behalf of Mrs. Bonoan-Dandan who was absent, he would like to ask some questions relating to women. He noted that a 1993 study of the civil service had shown that, while 58 per cent of those in the lowest salary grade were women, the latter accounted for only 9 per cent in the highest grade. Had there been any improvement in that connection in the last five years? In addition, in the context of paragraph 95 of the report, he would like to know the precise nature of the exceptions to the 1989 Labour Act, in which it had been made legal for women to do certain jobs which had hitherto been the preserve of men.

72. For himself he would like some information regarding the minimum wage. It was stated, in paragraph 74 of the report, that the mechanism for adjusting the level of the minimum wage and social security benefits had been changed. Since 1991, an Act had been in force that provided for a system linking the level of minimum wages to the trends in salaries in general - not, he noted, to trends in the cost of living. The report went on to say that a decree had been in force since January 1992 making it possible to de-link the minimum wage from the general trend in salaries. Had there been any such de-linking and, if so, what had been its effect?

73. Mr. POTMAN (Netherlands) said that Mr. Adekuoye's questions would again require a search for statistics and possible consultations with the capital. The delegation would try to provide the information as soon as possible.

Article 8

74. Mr. POTMAN (Netherlands), summarizing the written reply to the question about restrictions on the right to strike in legislation in the Netherlands, said that there was no specific legislation on the right to strike in either the public or the private sector and there were, therefore, no specific restrictions to that right arising out of such legislation. The general provisions of the Civil Code on unlawful acts could be invoked to have a strike banned or its duration limited, but much was left to be settled at the interface between employers and employees.

75. Mr. ANTANOVICH said that, according to paragraphs 102, 103, 104 and 105 of the report, there had been no new developments in regard to trade union rights. As he understood it, only about 25 per cent of the workforce was unionized, although union-negotiated collective bargaining agreements covered about three-quarters of the workforce. Thus, the trade union movement was stationary and, although the right to strike could be exercised freely, the number of strikes was very low.

76. He asked whether there was any relation between the high rate of unemployment and the apparent reluctance to strike. If not, what other explanation was there?

77. Ms. STAAL (Netherlands) said that, so far as any possible relation between high unemployment and the low number of strikes was concerned, workers were protected against dismissal and, where a strike was legal, could not be dismissed for taking part in it. Workers, therefore, possessed enough protection to be able to strike if they wished to do so. No new developments had been reported because the law in regard to trade union rights was unchanged. She might add, in connection with the right to strike, that the favourable economic situation in the Netherlands in recent years had also had an effect. In most cases, both employers and unions made every effort to reach a consensus, in accordance with the so-called "polder model".

78. Mr. ANTANOVICH said that the fact that, though only 25 per cent of the labour force was unionized, three-quarters of collective bargaining agreements were concluded with the unions, would seem to mean either that the unions were reaching out beyond their membership and venturing into the part of the labour force which was not unionized, or that most collective bargaining issues arose only in that part of the labour force that was unionized.

79. Mr. CEVILLE asked whether labour conflicts resulting in strikes were resolved directly between the parties or whether Government intervened in the solution.

80. Mr. POTMAN (Netherlands) said that the fact that no changes had ensued in the implementation of trade union rights in the reporting period did not mean that the law prevented people from exercising their rights, but rather that the system as it stood apparently functioned so well, admittedly within a conducive economic environment, as to make strikes very rare. The point of the "polder model" was that the parties were required to negotiate among themselves and to sort out their own differences. A strike could follow, if those negotiations failed.

81. Ms. STAAL (Netherlands) said that, as the parties to a labour conflict normally sought to settle matters directly between them, there was no need for intervention by the Government or for resort to court action.

82. Ms. JIMENEZ BUTRAGUEÑO pointed out that the only reservation that had been entered by the Netherlands to the Covenant was in respect of article 8, paragraph 1 (d), the provisions of which were not accepted in the case of the Netherlands Antilles.

83. The CHAIRPERSON said that her statement had been noted. The matter would be taken up at the appropriate time, in connection with the separate report on the Netherlands Antilles.

Article 9

84. Mr. POTMAN (Netherlands), summarizing the responses to the questions on article 9, the right to social security, said, in reply to the question about the completion of the review, that keeping the social security system

up-to-date was a never-ending process. The Invalidity Insurance Act of 1998 made employers financially responsible for any invalidity suffered by their employees. His country's next report would include information on that Act and any other similar measures.

85. In response to the question whether the Government was entitled to refuse minimum subsistence rights to people without a valid permit of residence, he said that, contrary to what the question suggested, the Linking Bill did not aim to withdraw minimum subsistence rights from all persons without valid residence status. The Bill was based on three principles: first, that regular social security schemes should be open only to foreign nationals admitted to the Netherlands unconditionally; secondly, that special arrangements and reception facilities should be established to provide social security for foreign nationals admitted to the Netherlands provisionally, including those whose applications were still being processed; and, lastly, that social security arrangements for foreign nationals who faced expulsion, and were able to leave the country, should be limited to elementary provisions such as medical care, free legal aid and children's education.

86. Ms. JIMENEZ BUTRAGUEÑO said that paragraph 108 of the report, which was all that was devoted to article 9, contained very little information. The booklet by the Ministry of Social Affairs and Employment, which supposedly explained the new system in full and was to have been submitted as an annex to the report, had not been made available to her. She had, therefore, a great many questions to ask.

87. She understood from the delegation that the new social security system would emphasize not only rights but responsibilities. Apparently, it was to be rationalized, as was being done in several other countries, with a view to saving money and eliminating fraud. She would like to know the precise details, however, of the changes that would be introduced. Was the new system of allowances to be more generous or less? Was the age of retirement to be advanced or put back? Were there to be special provisions for cases of urgent need, as in the case of foreigners without residence permits? How would insured workers be affected by the change in the system of health care? Would the new legislation protect the rights acquired under the old system and was there to be a transitional period? Would a trend towards earlier retirement not mean that the pensions system might run out of funds? She would welcome a detailed explanation by the delegation of all the features of the new system.

The meeting rose at 6 p.m.